

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8**

Docket No. **TSCA-08-2006-0005**

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| |) | |
| Envirocare of Utah, LLC |) | COMPLAINT AND NOTICE OF |
| 605 North 5600 West |) | OPPORTUNITY FOR HEARING |
| Salt Lake City, Utah 84116 |) | |
| |) | |
| Respondent. |) | |
| <hr/> |) | |

COMPLAINT

1. This civil administrative enforcement action is authorized by Congress in section 16 (a) of the Toxic Substances Control Act (TSCA, 15 U.S.C. §2615(a)). The United States Environmental Protection Agency ("EPA") regulations governing polychlorinated biphenyls ("PCBs") authorized by TSCA are set out in part 761 of Title 40 of the Code of Federal Regulations (CFR) and violations of the regulations constitute violations of the section 15 of TSCA, 15 U.S.C. §2614. The rules for this proceeding are the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" ("Rules of Practice"), 40 CFR part 22, a copy of which is enclosed.

2. The undersigned EPA officials have been properly delegated the authority to issue this action.

3. EPA alleges that Respondent has violated section 15 of TSCA, 15 U.S.C. §2614, and proposes the assessment of a civil penalty as more fully explained below.

NOTICE OF OPPORTUNITY FOR A HEARING

4. Respondent has the right to a public hearing before an administrative law judge to disagree with (1) any fact alleged by EPA in the complaint, or (2) the appropriateness of the proposed penalty.

5. To disagree with the complaint, and assert your right to a hearing, Respondent must file a written answer (and one copy) with the Regional Hearing Clerk, U. S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202-2466, within 30 days of receiving this Complaint. The answer must clearly admit, deny or explain the factual allegations of the

Complaint, the grounds for any defense, the facts you may dispute, and your specific request for a public hearing. Please see section 22.15 of the Rules of Practice for a complete description of what must be in your answer.

FAILURE TO FILE AN ANSWER AND REQUEST FOR HEARING WITHIN 30 DAYS MAY WAIVE RESPONDENT'S RIGHT TO DISAGREE WITH THE ALLEGATIONS OR PROPOSED PENALTY, AND RESULT IN A DEFAULT JUDGMENT AND ASSESSMENT OF THE PENALTY PROPOSED IN THE COMPLAINT.

QUICK RESOLUTION

6. Respondent may resolve this proceeding at any time by paying the specific penalty proposed in the Complaint. Such payment need not contain any response to, or admission of, the allegations in the Complaint. Such payment constitutes a waiver of respondent's right to contest the allegations and to appeal the final order. See section 22.18 of the Rules of Practice for a full explanation of the quick resolution process. If Respondent chooses to resolve this proceeding by paying the specific penalty proposed in this Complaint, payment must be made, within thirty (30) calendar days of receipt of this complaint, by sending a certified or cashier's check payable to "Treasurer, United States of America," in care of:

U. S. EPA, Region 8
(Regional Hearing Clerk)
Mellon Bank
P. O. Box 360859M
Pittsburgh, PA 15251

A copy of the check must be mailed simultaneously to the attorney listed below.

SETTLEMENT NEGOTIATIONS

7. EPA encourages discussing whether cases can be settled through informal settlement conferences. If you want to pursue the possibility of settling this matter, or have any other questions, contact Mr. Dana J. Stotsky at 1-800-227-9441, extension 6905, or the address below.

Please note that calling the attorney or requesting a settlement conference does NOT delay the running of the 30 day period for filing an answer and requesting a hearing.

GENERAL ALLEGATIONS

The following general allegations apply to each count of this Complaint:

8. EPA has jurisdiction of this matter under section 16 of TSCA, 15 U.S.C. § 2615.

9. Respondent, Envirocare of Utah, LLC., a corporation in good standing in the State of Utah, is a "person" within the meaning of 40 C.F.R. § 761.3, and thus subject to regulation.
10. Respondent was, at all times relevant to this action, the owner and operator of the facility located in Toole County, Utah, approximately 80 miles west of Salt Lake City, Utah.
11. On or about August 23, 2005, Ms. Kim P. Le, an authorized EPA inspector, conducted an inspection of the facility, with the consent of respondent, to determine compliance with TSCA and EPA regulations relating to polychlorinated biphenyls (PCBs), 40 C.F.R. part 761. Notices of inspection and confidentiality were issued to representatives of respondent.
12. The EPA's PCB regulations define "disposal" of PCBs to include "spills, leaks, and other uncontrolled discharges of PCBs...." 40 C.F.R. § 761.3.
13. The PCB regulations require that PCBs, as defined at 40 C.F.R. § 761.3, be disposed of by the incineration or burial methods specified in the regulations. 40 C.F.R. § 761.60.

COUNT 1

(Failure to Properly Mark and Format PCBs- Failure to Use Required EPA 'Mark')

14. On or about the day of the inspection, the Inspector observed in Respondent's Mixed Waste Operations Building, in an open area between Respondent's Mixed Waste Operations Building and Respondent's Mixed Waste Storage Building, and in an area outside of Respondent's Mixed Waste Storage Building, many PCB containers which did not display the EPA-approved PCB mark.
15. The PCB regulations require PCB containers to display the PCB mark. 40 C.F.R. § 761.45(a).
16. Respondent's failure to properly display the EPA-approved PCB mark, as described in the two paragraphs immediately above, as required by 40 C.F.R. § 761.45(a), constitutes a violation of section 15 of TSCA, 15 U.S.C., § 2614.

COUNT 2

(Failure to Properly Keep Records- Place Date on Container When Placed in Storage)

17. On or about the day of the inspection, the Inspector observed in an area outside of

Respondent's Mixed Waste Storage Building, two PCB containers which failed to display the date on which they were placed in storage for disposal.

18. The PCB regulations require PCB containers to display the date on which they were placed in storage for disposal, 40 C.F.R. § 761.180(a)(2)(ii)(C).
19. Respondent's failure to properly display the date two large PCB containers were placed in storage for disposal, as required by 40 C.F.R. § 761.180(a)(2)(ii)(C), constitutes a violation of section 15 of TSCA, 15 U.S.C., section 2614.

PROPOSED TSCA PENALTY

Section 16 of TSCA, 15 U.S.C. § 2615, as amended, and the regulations promulgated under section 6 of TSCA, 15 U.S.C. § 2605, authorize the assessment of a civil penalty of up to \$27,500 per day of violation for each violation of TSCA. Additionally, on February 13, 2004, the EPA Administrator caused to be promulgated, at 69 Fed Reg 7121, a Final Rule which implements the Civil Monetary Penalty Inflation Adjustment Rule, as mandated by the Debt Collection Improvement Act of 1996, and authorizes EPA to assess civil penalties of up to \$32,500 for TSCA violations occurring on or after March 15, 2004

In arriving at a penalty, EPA will take into consideration those factors required by section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(b), which include: the nature, circumstances, extent, and gravity of the violation, and, with respect to respondent, the ability to pay, effect on ability to continue to do business, any history of prior violations, degree of culpability, and other matters as justice may require.

EPA's actions with respect to the assessment of civil penalties are guided by its Polychlorinated Biphenyls (PCB) Penalty Policy, dated April 9, 1990, which provides a rational and consistent method for applying the TSCA statutory factors to the circumstances of a specific case.

Pursuant to section 15 of TSCA, Respondent may be assessed a penalty of up to \$32,500 per violation of TSCA. EPA herein below provides a brief explanation of the severity of each violation alleged and a recitation of the statutory penalty authority applicable for each violation alleged in the complaint, as allowed by 40 C.F.R. § 22.14(a)(4)(ii):

| COUNT | PROPOSED PENALTY |
|---|---|
| COUNT 1 | \$30,000 |
| COUNT 2 TOTAL PROPOSED PENALTY | <u>\$22,500</u> \$52,500 |

ATTACHMENTS

1. Memorandum on Penalty Calculation Justification dated August 28, 2006.
2. Consolidated Rules of Practice, 40 CFR part 22.
3. EPA PCB Penalty Policy dated April 9, 1990

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: 9/12/06

By: SIGNED
Martin Hestmark, Director
Technical Enforcement Program

Date: 12 September 2006

By: SIGNED dj
Michael T. Risner, Director
David J. Janik, Supervisory Enforcement Attorney
Legal Enforcement Program
303-312-6917
janik.david@epa.gov

Date: Sept. 12, 2006

By: SIGNED
Dana J. Stotsky
Senior Enforcement Attorney
Legal Enforcement Program
U.S. EPA Region 8
999 18th Street, Suite 300
Mail Code: 8ENF-L
Denver, Colorado 80202-2466
Colorado Bar # 14717
Phone: (303)-312-6905
FAX: (303) 312-6953
stotsky.dana@epa.gov

IN THE MATTER OF: Envirocare of Utah, LLC.,
EPA Docket No. **TSCA-08-2006-0005**

CERTIFICATE OF SERVICE

I hereby certify that the attached COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING dated was served as follows:

The original and one copy was hand carried to:

Regional Hearing Clerk
U.S. EPA, Region VIII (8RC)
999 18th Street, Suite 500
Denver, CO 80202-2405

A copy was sent via CERTIFIED MAIL, RETURN RECEIPT REQUESTED, postage prepaid, to:

Mr. Steven Creamer, President and CEO
Envirocare of Utah, LLC
605 North 5600 West
Salt Lake City, Utah 84116

9/12/06 _____
Date

SIGNED _____
Ms. Judith McTernan

IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.

THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE ON SEPTEMBER 12, 2006.